

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
CASE NO: 7:16-cv-39

Luis Antonio Arellano Galvan, Jose
Alfredo Avila Torres and Rafael Aaron
Brito Martinez, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

San Jose Mexican Restaurant of NC,
Inc., San Jose Mexican Restaurant #2
of Lumberton, Inc., San Jose Mexican
Restaurant of Pembroke, NC, Inc., Alberto
Flores Toledano and Edgardo Flores Perez,

Defendants.

AMENDED PROPOSED NOTICE

TO: Current or former employees of San Jose Mexican Restaurant

FROM: Clermont Ripley and Carol Brooke

RE: A law suit against San Jose Mexican Restaurant of NC, San Jose Mexican

Restaurant #2 of Lumberton, San Jose Mexican Restaurant of Pembroke,

Edgardo Flores Perez and Alberto Flores Toledano to recover unpaid wages

DATE: [Date]

1. Purpose of the Notice

The purpose of this Notice is to tell you about a lawsuit filed by some former employees of San Jose Mexican Restaurants against the restaurant and its owners seeking payment of wages to workers. You may be a member of one or more of the Plaintiff classes, which means you may be able to recover wages owed to you through this lawsuit. This notice will tell you how your rights may be affected by this suit, and to explain how you can participate in this suit if you want to do so.

2. Description of the Lawsuit

Jose Alfredo Avila Torres, Luis Antonio Arellano Galvan and Rafael Aaron Brito Martinez have filed a lawsuit in the United States District Court for the Eastern District of North Carolina against three locations of San Jose Mexican Restaurant, Edgardo Flores and Alberto Flores. The name and case number of the lawsuit is Arellano Galvan, *et al.* v. San Jose Mexican Restaurant of NC, Inc., *et al.*, 7:16-CV-39. The workers bringing the lawsuit are called the Plaintiffs. San Jose Mexican Restaurant, Edgardo Flores and Alberto Flores are called the Defendants.

The lawsuit asks for payment of minimum wages and overtime wages that Plaintiffs claim they should have been paid by Defendants. Specifically the lawsuit claims that:

- Wait staff were not properly paid because they were required to work for just tips;
- Bussers, cooks and other employees were not properly paid for all of the hours they worked because they were paid a weekly salary regardless of the hours worked;
- Employees had to purchase their own uniform shirts.

The lawyers for the Plaintiffs who brought this case are:

Clermont Ripley and Carol Brooke
North Carolina Justice Center
P.O. Box 28068
Raleigh, NC 27611
866-415-1389 (toll-free)

3. Your Right to Participate in this Lawsuit

This notice tells you about your rights under the federal minimum wage and overtime law in the United States, which is called the Fair Labor Standards Act. It is possible that you have a right to join this lawsuit if you worked for San Jose Mexican Restaurant at any time between March 10, 2013 and the present at any of the following locations:

5039 Fayetteville Rd, Lumberton, NC
3027 N. Roberts Ave, Lumberton, NC
938 E. 3rd St., Pembroke, NC

You may be eligible to participate in this lawsuit if your experience was similar to that of the named Plaintiffs and you were “similarly situated” to the Plaintiffs. Your options are the following:

1) Do Nothing – If you do not act, you may lose some of your rights to seek payment, as your claims expire. If you do nothing, you do not lose your right to bring a separate lawsuit against the Defendants. However, if money is awarded to the Plaintiffs in this case, you will not receive it if you do not act.

2) Ask to join this Lawsuit – By joining this lawsuit, you gain the possibility of getting money or benefits that may result from a trial or settlement, but you give up your right to bring a separate lawsuit of your own against the Defendants for the same legal claims brought in this lawsuit.

4. How to Participate in this Lawsuit

If you want to join this lawsuit and be eligible to receive money you might be owed you must read (or have read to you), sign and return the Consent to Sue form included with this notice. **The Consent to Sue forms must be mailed or faxed to the North Carolina Justice Center by [DATE].** The Consent to Sue form should be mailed to:

Clermont Ripley
224 S. Dawson St.
P.O. Box 28068
Raleigh, NC 27611

It can also be faxed to 919-856-2175

If you have questions or concerns about how to participate in this case, you may call the Plaintiffs' attorneys: 866-415-1389.

5. U.S. Department of Labor Settlement with San Jose Mexican Restaurants

You may have also received a letter (WH-60) from the U.S. Department of Labor (USDOL) about a settlement with San Jose Mexican Restaurants. The USDOL conducted an investigation of San Jose Mexican Restaurants in 2013 and 2014 and found violations of the Fair Labor Standards Act. In July 2015 the USDOL and ten locations of San Jose Mexican Restaurants, including the three named in this lawsuit, entered into a settlement agreement in which the restaurants agreed to pay \$511,745.52 in back wages to 125 specific employees for the time period of June 1, 2013 through March of 2014.

If you are one of those 125 employees, you may have already received a check from USDOL or you may be eligible to receive a check from USDOL. By accepting payment from USDOL you were/will be required to sign a form waiving your right to claim any additional damages for the time period specified in your letter from USDOL. You may still participate in this lawsuit if you have already received a check from USDOL, but the amount of damages you are able to receive may be impacted by your prior acceptance of a settlement check from USDOL. If you have not yet received a check or letter from USDOL about the settlement, you may still participate in this lawsuit. However, if you receive any money as a result of this lawsuit it may have an impact on your right to later receive money from USDOL also.

To find out if you are one of the 125 employees who is entitled to money under the USDOL settlement, contact the Plaintiffs' attorneys: 866-415-1389.

6. Retaliation is Illegal

It is a violation of United States law for Edgardo Flores, Alberto Flores or San Jose Mexican Restaurants and/or their agents to threaten, harm, fire, refuse to hire, or in any manner discriminate against you for taking part in this case. If you believe that you have been threatened, punished, discriminated against, or retaliated against for discussing or choosing to join in this lawsuit, you can call the North Carolina Justice Center at: 866-415-1389

7. Effect of Joining this Lawsuit

If you join this lawsuit, you will be included in the decision made by the judge, whether that decision is favorable or unfavorable. You may also share in any money received in the lawsuit (either through a decision by the Court or through a settlement). If you receive money through this lawsuit, that could impact your ability to later receive money from the USDOL settlement (see section 5 above).

By joining this lawsuit, you designate the class representatives to make decisions on your behalf concerning this case. The decisions and agreements made in this lawsuit will affect your claims.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE HONORABLE LOUISE FLANAGAN, JUDGE FOR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA. THERE ARE NO GUARANTEES THAT MONEY WILL BE RECOVERED IN THIS CASE. THE COURT HAS NOT YET DECIDED WHETHER THE CLAIMS MADE IN THE LAWSUIT ARE VALID.